

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

United States of America

v.

Lemar Cornelius Franklin

Crim. No. 4:06-cr-00207-TLW-6

**Order**

This matter is before the Court on Defendant's motion to appoint counsel to his case in light of the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2551 (2015). He pled guilty to a drug conspiracy charge and was sentenced as a guideline career offender to 360 months imprisonment.<sup>1</sup> His career offender predicate convictions were for possession with intent to distribute crack cocaine, distribution of crack within proximity of a park, failure to stop for blue light, and assault and battery of a high and aggravated nature (ABHAN). PSR ¶¶ 37, 42, 44, 45, 67. Even without the failure to stop and ABHAN convictions, the record reflects that he would remain a career offender under the guidelines in light of his two predicate drug convictions.

Even assuming that *Johnson* applies to the guidelines,<sup>2</sup> Defendant would not be entitled to relief, as the Fourth Circuit has concluded that an erroneous application of the sentencing guidelines, including a career offender designation, is not cognizable on collateral review pursuant to § 2255. *See United States v. Foote*, 784 F.3d 931, 936 (4th Cir. 2015). Thus, the Court

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<sup>1</sup> His sentence was subsequently reduced to 300 months pursuant to Guideline Amendment 706, then to 160 months pursuant to a Rule 35(b) motion, then to 144 months pursuant to Guideline Amendment 750. ECF Nos. 566, 622, 657.

<sup>2</sup> The Court notes that this issue has not been decided by the Fourth Circuit, and at least one Court of Appeals has concluded that *Johnson* does not apply to the guidelines. *See United States v. Matchett*, 802 F.3d 1185, 1194–96 (11th Cir. 2015) (concluding that *Johnson* does not apply to the guidelines because they do not prohibit conduct or fix punishments).

concludes that no basis exists to appoint counsel in this case. Accordingly, his motion to appoint counsel, ECF No. 746, is **DENIED**.

**IT IS SO ORDERED.**

s/ Terry L. Wooten  
Terry L. Wooten  
Chief United States District Judge

May 18, 2016  
Columbia, South Carolina